

stay. First, without prejudging a separate petition for reconsideration filed by TIA, the Commission concludes that TIA has not shown that the petition is likely to prevail on the merits. In particular, TIA's argument that the Commission should adopt anti-fraud rules based on authentication procedures does not require abandonment of ESN protection rules; instead, if TIA's alternative methodology proves effective, it offers a potentially complementary level of protection against fraud rather than a substitute for ESN regulation.

10. Second, the Commission is not persuaded that either manufacturers or cellular customers will be irreparably harmed if the stay motion is not granted. The new ESN rule applies only to new equipment receiving type acceptance after January 1, 1995. Thus, manufacturers may continue to produce equipment under previous type-acceptances without being required to install hardened ESNs. Finally, the cost of allowing ESN "cloning" to go virtually unchecked is far greater than the cost of implementing the new rule. The Commission therefore concludes that TIA's motion for stay should be denied.

Ordering Clauses

11. Accordingly, *it is ordered* that the effective date of new Section 22.541 of our Rules, the application of new Section 22.131 of our Rules insofar as it applies to 931 MHz paging applications, and the 60-day amendment procedure for all pending 931 MHz paging applications described in paragraph 98 of the *Part 22 Order* are stayed, effective as of the adoption date of this Order, until further notice.

12. *It is further ordered* That action on the Petition for Partial Stay filed by the Personal Communications Industry Association on December 19, 1994, with respect to implementation of new 931 MHz processing rules is deferred until future notice.

13. *It is further ordered* That the effective date of the policy prohibiting two licensees from sharing a single transmitter, as described in paragraph 71 of the *Part 22 Order*, is stayed, effective as of the adoption date of this order, until further notice.

14. *It is further ordered* That the Motion for Stay filed by the Mobile and Personal Communications 800 Section of the Telecommunications Industry Association on December 19, 1994, is denied.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

For the reasons set forth in the preamble, 47 CFR part 22 is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.541 is stayed until further notice.

[FR Doc. 95-1218 Filed 1-13-95; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-148; RM-8022]

Radio Broadcasting Services; Ludlow, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 261B1 to Ludlow, California, as that community's second local FM broadcast service, in response to a petition for rule making filed on behalf of Miracle Broadcasting. See 57 FR 31996, July 20, 1992. Coordinates used for Channel 261B1 at Ludlow are 34-47-31 and 116-03-56. Ludlow is located within 320 kilometers (199 miles) of the Mexican border, and therefore, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

DATES: Effective date:

February 27, 1995. The window period for filing applications on Channel 261B1 at Ludlow, California, will open on February 27, 1995, and close on March 30, 1995.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process for Channel 261B1 at Ludlow, California, should be addressed to the Audio Services Division, FM Branch, (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 92-148, adopted January 4, 1995, and released January 12, 1995. The full text of this

Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, NW, Room 246, or 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 261B1 at Ludlow.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95-1155 Filed 1-17-95; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AC23

Endangered and Threatened Wildlife and Plants; *Gymnoderma Lineare* (Rock Gnome Lichen) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the lichen *Gymnoderma lineare* (rock gnome lichen) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This lichen, which is limited to 25 populations in North Carolina and 7 populations in Tennessee, is threatened by collection, logging, and habitat disturbance due to heavy use by hikers and climbers. It is also indirectly threatened by exotic insect pests and possibly air pollution, which are contributing to the demise of the Fraser fir forests at higher elevations in the

Southern Appalachians. This action implements for *Gymnoderma lineare* the Federal protection and recovery provisions provided by the Act.

EFFECTIVE DATE: February 17, 1995.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (Telephone 704/665-1195, Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Gymnoderma lineare (Evans) Yoshimura and Sharp, first described by Evans (1947) as *Cladonia linearis* from material collected in Tennessee, is a squamulose lichen in the reindeer moss family. This species is the only member of its genus occurring in North America (Yoshimura and Sharp 1968). *Gymnoderma lineare* occurs in rather dense colonies of narrow straps (squamules). The only similar lichens are the squamulose species of the genus *Cladonia*. *Gymnoderma lineare* has terminal portions of the straplike individual lobes that are blue-grey on the upper surface and generally shiny-white on the lower surface; near the base they grade to black (unlike squamulose *Cladonia*, which are never blackened toward the base) (Weakley 1988, Hale 1979). Hale's (1979) description of the species reads, "Squamules dark greenish mineral grey; lower surface white to brownish toward the tips, weakly corticated; podetia lacking but small clustered apothecia common on low tips." Weakley further describes the species as having squamules about 1 millimeter (.04 inches (in.)) across near the tip, tapering to the blackened base, sparingly and subdichotomously branched, and generally about 1 to 2 centimeters (.39 to .79 in.) long (though they can be longer or shorter, depending upon environmental factors). The squamules are nearly parallel to the rock surface, but the tips curl away from the rock, approaching or reaching a perpendicular orientation to the rock surface. The fruiting bodies (apothecia) are borne at the tips of the squamules and are black (contrasting to the brown or red apothecia of *Cladonia* spp.) (Weakley 1988). The apothecia are borne singly or in clusters, usually at the tips of the squamules but occasionally along the sides; these have been found from July through September (Evans 1947, North Carolina

Natural Heritage Program records 1991). The apothecia are either sessile or borne on short podetia 1 to 2 millimeters (.04 to .08 in.) in height; the largest of these have a diameter of about 1 millimeter (.04 in.), with most being much smaller. The apothecia are cylindrical in shape and radial in symmetry (Evans 1947). The primary means of propagation of this lichen appears to be asexual, with colonies spreading clonally.

Gymnoderma was considered a monotypic genus for over a century, until its revision by Yoshimura and Sharp (1968). These authors reclassified Evans' (1947) *Cladonia linearis* as *Gymnoderma lineare* on the basis of its short and solid podetia that lack symbiotic algae.

Gymnoderma lineare is endemic to North Carolina and Tennessee and occurs only in areas of high humidity, either at high elevations, where it is frequently bathed in fog, or in deep gorges at lower elevations. It is primarily limited to vertical rock faces where seepage water from forest soils above flows at (and only at) very wet times. It is almost always found growing with the moss *Andreaea* in these vertical intermittent seeps. This association makes it rather easy to search for, due to the distinctive reddish brown color of *Andreaea* that can be observed from a considerable distance (Weakley 1988). Most populations occur above an elevation of 1,524 meters (5,000 feet). In Tennessee, it is apparently limited to the Great Smoky Mountains National Park. Other species often found growing with *G. lineare* include *Huperzia selago*, *Stereocaulon* sp., *Scirpus cespitosus*, *Carex misera*, *Rhododendron* spp., *Saxifraga michauxii*, *Krigia montana*, *Heuchera villosa*, *Geum radiatum*, and sometimes *Juncus trifidus*. The high-elevation coniferous forests adjacent to the rock outcrops and cliffs most often occupied by the species are dominated by red spruce (*Picea rubens*) and another Federal candidate species, Fraser fir (*Abies fraseri*).

Thirty-seven populations of *Gymnoderma lineare* have been reported historically; thirty-two remain in existence. Seven of these populations are in Sevier County, Tennessee. In North Carolina, two populations remain in Mitchell County, five in Jackson County, four in Yancey County, one in Swain County, three in Transylvania County, four in Buncombe county, two in Avery County, two in Ashe County, one in Rutherford County, and one in Haywood County. Historically, five additional populations were known for this species. The reasons for the disappearance of the species at most of

these sites are undocumented; however, one is believed to have been destroyed by highway construction. Many of the formerly occupied sites are subjected to heavy recreational use by hikers, climbers, and sightseers. In addition, the coniferous forests, particularly those dominated by Fraser fir at the high-elevation sites, are being decimated by the balsam wooly adelgid, an exotic insect pest, and possibly by air pollution. The death of the forests adjacent to the habitat occupied by this lichen has resulted in locally drastic changes in microclimate, including desiccation and increased temperatures.

The continued existence of this species is threatened by trampling and associated soil erosion and compaction, other forms of habitat disturbance due to heavy recreational use of the habitat by hikers, climbers, and sightseers, as well as by development for commercial recreational facilities and residential purposes. It is also potentially threatened by logging, collectors, and air pollution (either directly or indirectly).

Only 7 of the remaining 32 populations cover an area larger than 2 square meters (2.4 square yards). Most are 1 meter (3.3 feet) or less in size. It is not known what constitutes a genetic individual in this species, and it is possible that each of these small colonies or patches consists of only a single clone (Weakley 1988). Over the past decade several of the currently extant populations have undergone significant declines (Paula DePriest, Smithsonian Institution, personal communication, 1992; Karin Heiman, Environmental Consultant, personal communication, 1992), some within as little as 1 year (Alan Smith, Environmental Consultant, personal communication, 1992). Although all but five of the remaining populations are in public ownership, many continue to be impacted by collectors, recreational use, and environmental factors. Although no populations are known to have been lost as a result of logging operations, this is a potential threat.

Previous Federal Action

Federal government actions on *Gymnoderma lineare* began with the 1990 publication in the **Federal Register** of a revised notice of review of plant taxa for listing as endangered or threatened species (55 FR 6184); *Gymnoderma lineare* was included in that notice as a category 2 species. Category 2 species are those for which listing as endangered or threatened may be warranted but for which substantial data on biological vulnerability and threats is not currently known or on file to support proposed rules.

Subsequent to this notice, the Service received additional information from the North Carolina Natural Heritage Program (Alan Weakley, North Carolina Natural Heritage Program, personal communication, 1991) and the Smithsonian Institution (DePriest, personal communication, 1992); this information and additional field data gathered by the North Carolina Natural Heritage Program, the Service, and the National Park Service (Keith Langdon and Janet Rock, Great Smoky Mountains National Park, personal communication, 1992; Bambi Teague, Blue Ridge Parkway, personal communication, 1991) indicated that the addition of *Gymnoderma lineare* to the Federal List of endangered or threatened plants is warranted. The Service approved this species for elevation to category 1 on August 30, 1993, and proposed it for listing as endangered on December 28, 1993 (58 FR 68623).

Summary of Comments and Recommendations

In the December 28, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the "Asheville Citizen-Times" (Asheville, North Carolina) on January 14, 1994, and the "Mountain Press" (Sevierville, Tennessee) on January 17, 1994.

Fifteen comments were received. Eleven of these expressed support for the proposal, and one presented additional information without stating a position. One additional respondent took no position on the proposal but expressed a negative view toward the potential designation of critical habitat. Two respondents opposed the proposal; one stated no reason for opposition, the other expressed the opinion that logging was not a potential threat to the lichen and that extinction is a natural process. In the proposed rule the Service stated that no populations of this species were known to have been destroyed as a result of logging operations but that this was a potential threat. This is particularly true where the lichen grows on boulder faces along stream edges in hardwood forests. Although there is no direct evidence of destruction of populations by silvicultural activities, monitoring of this species has only recently begun. Other populations have undoubtedly been lost without their

extirpation having been documented. In addition, there is a strong association of this species with watersheds where intensive logging has not occurred (Langdon, personal communication, 1993; Weakley, personal communication, 1993). Based upon this evidence, the Service believes that intensive logging is a potential threat to some of the remaining populations of this species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Gymnoderma lineare* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gymnoderma lineare* (Evans) Yoshimura and Sharp are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Gymnoderma lineare* is a narrow endemic, restricted to high-elevation mountaintops and cliff faces and the lower-elevation gorges in the Southern Appalachians of western North Carolina and eastern Tennessee (see "Background" section for specific distributions). Although populations are declining and vanishing for reasons that are, in many cases, not clearly understood, destruction and adverse modification of habitat pose a major threat to the remaining populations of this species. Fourteen percent of the historically known populations have been completely extirpated, and many others have been severely reduced in size. Only 32 populations remain, most covering an area less than 1 square meter (1.2 square yards) in size.

Five of these populations are on privately owned lands, with one slated for residential development within the near future. Although the majority of the remaining populations are on publicly owned lands, most of these are subject to heavy recreational use, and many have been damaged as a result. Four populations contain 75 percent of the remaining plants. Three of these are located on lands administered by the National Park Service and the U.S. Forest Service, at sites where they are subjected to intense use by hikers, climbers, and sightseers. The only other relatively large population is located on

a privately owned site that has been developed as a commercial recreational facility. All the known populations combined cover a total area of approximately 142 square meters (170 square yards). All five privately owned sites are unprotected and are located in an area that is rapidly developing as a center for resorts and tourism.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Gymnoderma lineare* is not currently a significant component of the commercial trade in native plants. Hale (1979) stated, "This is one of the most unusual endemic lichens in North America and should not be collected by individuals." Nevertheless, many populations have been decimated by scientific collectors. Paula DePriest (personal communication, 1992) observed that at least one population in the Great Smoky Mountains National Park was virtually wiped out by lichenologists who collected them during a field trip. Given the very small size of most colonies and the slow growth rate of this species, extirpation by collecting or by natural accident (such as slides or floods) is a distinct possibility (Weakley 1988). Many of the populations are easily accessible, being close to trails or roads. Publicity could generate an increased demand and intensify collecting pressure (see "Critical Habitat" section for reasons why critical habitat is not being designated).

C. *Disease or predation.* This taxon is not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* *Gymnoderma lineare* is afforded legal protection in North Carolina by North Carolina General Statute, article 20, chapter 106, sections 202.1–202.8, that prohibits intrastate trade and taking of State-listed plants without a State permit and written permission of the landowner. *Gymnoderma lineare* is listed in North Carolina as threatened; it is not currently listed in Tennessee. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat or unintentional damage from recreational use. The Act will provide additional protection and encouragement of active management for *Gymnoderma lineare*, particularly on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* This taxon is rare and vulnerable due to its specialized habitat requirements for bare rock faces with a precise amount of moisture and light. As mentioned in the previous sections of this rule, most of the remaining populations are small in

numbers of individuals and in terms of area covered by the plants. Therefore, there is probably little genetic variability in this species, making it more important to maintain as much habitat and as many of the remaining colonies as possible. Rock slides, severe storms or droughts, or other natural events could easily eliminate populations of this lichen.

In recent years the spruce-fir forests adjacent to the high-elevation cliffs and rock outcrops occupied by this rare lichen have suffered dramatic declines due, at least in part, to airborne pollution and the impacts of an exotic insect, the balsam wooly adelgid. The impacts of this forest decline on *Gymnoderma lineare* cannot be accurately assessed at this time. Even though rock gnome lichen often grows in exposed places, the drastic decline of adjacent high-elevation forests may result in excessive desiccation of the moist sites required by the species. This theory would seem to be supported by the fact that *Geum radiatum* (spreading avens), already federally listed as endangered, is showing drastic declines at many of the same sites. With all but seven of the remaining populations of *Gymnoderma lineare* being less than 2 square meters (2.4 square yards) in size, and with this species' very slow growth rate, even relatively small declines could pose a significant threat to the long-term survival and recovery of the species.

In addition to the indirect effects of air pollution on this species' habitat, lichens are known to effectively accumulate a wide variety of pollutants washed from the atmosphere by precipitation (St. Clair 1987). Photosynthetic rates, respiration rates, and the membrane integrity of lichens have all been found to be very sensitive to a wide range of common air pollutants, including sulfur dioxide. St. Clair (1987) states, "Indeed lichen physiological processes appear to provide an indication of pollution damage long before any visible thallus necrosis or changes in community structure can be detected." A field study conducted by Pearson and Rodgers (1982) showed that membrane integrity in lichens is severely impacted following exposure to sulfur dioxide. Lawrey (1987) found that increasing levels of sulfur dioxide pollution had resulted in the elimination of some species of lichens in an area just north of the range of *Gymnoderma lineare*. Heavy metals and ozone also have been found to negatively affect lichens' potassium efflux, chlorophyll content, and photosynthetic rates (Puckett 1976, Nash and Sigal 1979, Sigal and Taylor

1979). Several observers have already noted declines in populations of *Gymnoderma lineare* that cannot be directly attributed to physical disturbance of the habitat (Weakley, personal communication, 1992; DePriest, personal communication, 1992; Shawn Oakley, The Nature Conservancy, North Carolina Field Office, personal communication, 1992). Given the extremely small size of most of the remaining populations, declines of just a few centimeters a year could result in the imminent extirpation of all but three of the remaining populations of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Gymnoderma lineare* as endangered. With 14 percent of the known populations having been completely extirpated and all the remaining populations subject to some form of threat, this species warrants protection under the Act. With the small number of individuals and area covered by the remaining populations, and with significant declines having been documented in many of these, this species is in danger of extinction throughout all or a significant portion of its range and therefore qualifies as an endangered species under the Act. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *Gymnoderma lineare*. Publication of critical habitat descriptions and maps would increase public interest and possibly lead to additional threats for this species from collecting and vandalism (see threat factor "B" above). The species has already been subjected to excessive collecting by scientific collectors at several sites. Increased publicity and a provision of specific location information associated with critical habitat designation could result in increased collection from the remaining wild populations. Although taking of endangered plants from lands under Federal jurisdiction (and from privately owned lands under certain circumstances—see "Available Conservation Measures" section) and reduction to possession is prohibited by

the Act, taking provisions are difficult to enforce. Publication of critical habitat descriptions would make *Gymnoderma lineare* more vulnerable and would increase enforcement problems for the U.S. Forest Service and the National Park Service. Also, the populations on private lands would be more vulnerable to taking. Increased visits to population locations stimulated by critical habitat designation, even without collection of plants, could adversely affect the species due to the associated increase in trampling of the fragile habitat occupied by this lichen. The lichen is easily scraped off its rocky substrate, and denuded habitat is not quickly recolonized. The Federal and State agencies and landowners involved in managing the habitat of this species have been informed of the plant's locations and of the importance of protection; therefore, it would not be prudent and no additional benefit would result from a determination of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and the National Park Service have jurisdiction

over portions of the species' habitat. Federal activities that could impact *Gymnoderma lineare* and its habitat in the future include, but are not limited to, the following—construction of recreational facilities (including trails, buildings, or maintenance of these facilities), use of aerially applied retardants in fire-fighting efforts, road and utility line construction, certain forest management activities, permits for mineral exploration and mining, regulation of air pollution, and any other activities that do not include planning for the species' continued existence. The Service will work with the involved agencies to secure protection and proper management of *Gymnoderma lineare* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions at section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, the 1988 amendments (P.L. 100-478) to the Act protect endangered plants from malicious damage or destruction on Federal lands, and the removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Of the thirty-two remaining populations of *Gymnoderma lineare* all but five are located on public lands. Collection, damage or destruction of this species on public lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up,

damaging or destroying endangered plants on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. North Carolina prohibits intrastate trade and take of *G. lineare* without a State permit and written permission from the landowner. *G. lineare* is not legally protected under Tennessee State law, since the State's list does not include nonvascular plants. The only known populations in Tennessee are found on public lands. The Service is not aware of any otherwise conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few permits would ever be sought or issued since *Gymnoderma lineare* is not common in the wild and is not commercially cultivated. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Asheville Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and inquiries regarding prohibitions should be addressed to the U.S. Fish and Wildlife Service, Southeast Regional Office, Ecological Services Division, Threatened and Endangered Species, 1875 Century Boulevard, Atlanta, Georgia 30345-3301 (Telephone 404/679-7099, Facsimile 404/679-7081).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

- Evans, A.W. 1947. A study of certain North American *Cladoniae*. *Bryologist* 50:14-51.
- Hale, M. 1979. How to know the lichens, second edition. William C. Brown Company, Dubuque, IA. P. 231.

- Lawrey, J.D. 1987. Lichens as indicators of atmospheric quality in the northern district of Shenandoah National Park, Virginia. Final report to the U.S. National Park Service, Denver, CO. Contract number CX-0001-4-0059.
- Nash, T., III, and L. Sigal. 1979. Gross photosynthetic response of lichens to short-term ozone fumigations. *The Bryologist* 82(2):280-285.
- Pearson, L., and G. Rodgers. 1982. Air pollution damage to cell membranes in lichens. III. Field experiments. *Phyton* 22(2):329-327.
- Puckett, K. 1976. The effects of heavy metals on some aspects of lichen physiology. *Canadian Journal of Botany* 54(23):2695-2703.
- St. Clair, L. 1987. Final report concerning the establishment of an air quality biomonitoring program using various lichen parameters in the James River Face Wilderness Area, Jefferson National Forest, Virginia. U.S. Forest Service, Jefferson National Forest, Roanoke, VA. 16 pp.
- Sigal, L., and O. Taylor. 1979. Preliminary studies on the gross photosynthetic response of lichens to peroxyacetylnitrate fumigations. *The Bryologist* 82(4):564-575.
- Weakley, A. S. 1988. Species account for *Gymnoderma lineare*. North Carolina Plant Conservation Program, Raleigh, NC. 3 pp.
- Yoshimura, I., and A. J. Sharp. 1968. A revision of the genus *Gymnoderma*. *American Journal of Botany* 55(5):635-640.

Authority: The primary author of this final rule is Ms. Nora Murdock (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under lichens, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

| Species | | Historic range | Family name | Status | When listed | Critical habitat | Special rules |
|---------------------------|-------------------|-----------------------|--------------------|--------|-------------|------------------|---------------|
| Scientific name | Common name | | | | | | |
| * | * | * | * | * | * | | * |
| LICHENS | | | | | | | |
| * | * | * | * | * | * | | * |
| <i>Gymnoderma lineare</i> | Rock gnome lichen | U.S.A. (NC, TN) | Cladoniaceae | E | 572 | NA | NA |
| * | * | * | * | * | * | | * |

Dated: December 6, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95-1174 Filed 1-17-95; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 950110009-5009-01; I.D. 120594B]

RIN 0648-AH45

Snapper-Grouper Fishery Off the Southern Atlantic States; Landing Gag

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS publishes this emergency interim rule at the request of the South Atlantic Fishery Management Council (Council) to require that selected vessels in the commercial snapper-grouper fishery land gag in a whole condition. The intended effect of this rule is to facilitate the collection of biological data necessary for the management of gag.

EFFECTIVE DATE: January 18, 1995, through April 18, 1995.

ADDRESSES: Copies of documents supporting this action, including an environmental assessment, may be obtained from Peter J. Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813-570-5305.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP). The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 646

under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Gag, *Mycteroperca microlepis*, is a protogynous hermaphrodite in the family Serranidae (sea basses) that is found throughout the South Atlantic region. It is a relatively long-lived species that is highly prized by fishermen. Gag form spawning aggregations consisting of a few dominant males and many females. Male gag are very aggressive during spawning and are particularly vulnerable to overfishing during the spawning season. Several related species in the Caribbean have experienced recruitment failure due to excessive fishing during the spawning season.

Whereas the average sex ratio (male to female) of gag previously was 1:10, recently it appears to be approaching 1:100. This is coincident with increasing fishing pressure on gag, declining landings, and smaller average size of gag landed. Recent public testimony indicates a growing concern that the gag stock is declining.

The Council is concerned that a reduction in abundance of males is adversely affecting the reproductive capacity of the resource. The Council considered management measures for gag in Amendments 6 and 7 to the FMP, but deferred action because of the lack of definitive, current information on the sex ratio and other reproductive characteristics. That information has been difficult to obtain because gag are eviscerated at sea, as specifically authorized at 50 CFR 646.21(b)(1). Hence, their reproductive organs have been unavailable for sampling by NMFS biologists.

In October 1994, NMFS biologists reported the inadequacy of current data to the Council. Because of that inadequacy of data, the Council requested this emergency interim rule so that the reproductive organs of gag could be sampled during the 1994-95 spawning season that begins in December. Sampling is expected to occur through April, the end of the spawning season.

A significant reduction in the reproductive capacity of gag will result in recruitment overfishing and consequent long-term adverse impacts on the resource. The availability of gag reproductive organs under this emergency interim rule will enable NMFS biologists to obtain information necessary for the Council to determine changes in the reproductive capacity of gag and to formulate management measures to avert recruitment overfishing, if necessary. The Council requests this action now to take advantage of the 1994-95 spawning season, during which gag are more readily available. If the data are not collected under this emergency interim rule, the 1994-95 spawning season will be over before an FMP amendment can be implemented to collect the data. Thus the data would not be available for at least another year. Such delay is not in the best interests of effective management of the gag resource and may require more severe measures to avert recruitment overfishing. Based on data obtained during the forthcoming spawning season, the Council will be able to devise appropriate management measures for implementation by NMFS prior to the 1995-96 spawning season.

The NMFS Science and Research Director will select permitted vessels for sampling and notify vessel owners in writing. Sampling will occur at dockside or in dealer establishments. Sampling schedules will be coordinated among vessel owners, dealers, and NMFS port agents to ensure effective, representative sampling of landings and to minimize disruption of off-loading procedures. The cooler weather during the sampling program will minimize possible deterioration of product quality because bacterial activity is markedly reduced at lower temperatures.

Compliance with NMFS Guidelines for Emergency Rules

The Council and NMFS have concluded that the present situation constitutes a biological emergency, which is properly addressed by this emergency interim rule, and that the situation meets NMFS's policy